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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LE BONITAS S.p.A., Plaintiff, -against- PARIS HILTON ENTERTAINMENT, INC., Defendant.	Case No. 10 Civ. 9350 (AKH) **PARIS HILTON ENTERTAINMENT, INC.'S COUNTERCLAIM AND <u>DEMAND FOR JURY TRIAL</u>**
PARIS HILTON ENTERTAINMENT, INC., Counter-Claimant, -against- LE BONITAS S.p.A., Counter-Defendant.	

Defendant/Counter-Claimant Paris Hilton Entertainment, Inc. ("PHE") by and through its attorneys, Lavely & Singer Professional Corporation and Frankfurt Kurnit Klein & Selz PC, for its Counterclaim against Plaintiff Le Bonitas S.p.A. ("Plaintiff" or "Le Bonitas") respectfully alleges as follows:

INTRODUCTION

1. This action, commenced by Italian clothing manufacturer Le Bonitas, is born of pure fiction, a tactical move by Le Bonitas to avoid payment of more than $1,500,000 in ***guaranteed*** royalties owed to Paris Hilton Entertainment, Inc. ("PHE") under a five-year License Agreement. In early 2009, PHE agreed to license the Paris Hilton name and brand for use by Le Bonitas in connection a line of lingerie, sleepwear and beachwear. In exchange, Le Bonitas promised to pay PHE minimum ***guaranteed*** royalty payments in excess of $1,660,000, as well as other compensation tied to sales.

2. In order to protect Ms. Hilton's brand (considered one of the most recognized and sought-after celebrity brands) and ensure the quality of products sold under her name, the License Agreement provides PHE with strict approval rights over all design concepts, finished art and physical samples to be provided. The agreement also required Le Bonitas to spend a minimum amount on advertising and promotions and "to use its best efforts to sell, distribute and supply" the licensed items within the licensed territory.

3. However, instead of honoring its promises, Le Bonitas did very little to advertise and promote the launch of the Paris Hilton line, claiming in an October 20, 2009 email that "we have no money to spend." Of course, Le Bonitas did not bother to disclose any financial issues to PHE when it was courting Ms. Hilton to sign an agreement just seven months earlier. Unfortunately, the lack of financial commitment from Le Bonitas, coupled with a downturn in the overall European economy, resulted in poor initial sales. PHE nevertheless remained

committed to its licensee and offered to have Ms. Hilton do public appearances, photo shoots and other promotions to turn things around. Le Bonitas declined and instead began looking for excuses to avoid its financial obligations.

4. At a meeting in London in November 2009, long before this lawsuit was filed, Le Bonitas admitted to PHE's licensing agent, The Beanstalk Group, that it had not spent any money on advertising to promote the Paris Hilton collection. Le Bonitas also complained that it was struggling with all of its brands and asked for new financial terms. As they were just seven months into a five-year agreement, and Le Bonitas had not even begun to actively promote and advertise the line, the request appeared premature. Understandably, PHE declined to renegotiate.

5. Although PHE assured that Ms. Hilton would do whatever she could to promote the line and make it a great success, Le Bonitas chose not to honor its end of the bargain. Instead, in direct breach of its contract, Le Bonitas unilaterally abandoned the line, repudiated its obligation to pay PHE for the license, hired counsel and launched this patently frivolous lawsuit. Indeed, although Le Bonitas is suing PHE for allegedly failing to approve certain designs in ten days, the contract they signed does not require approval in ten days. During negotiations, Le Bonitas specifically asked for such a provision, and it was declined. Further and fatally undermining Plaintiff's claim, the License Agreement expressly states that Le Bonitas "shall not have any rights against [PHE] for damages or other remedies by reason of [PHE's] failure or refusal to grant any approval."

6. In sum, through this lawsuit, Le Bonitas is attempting to manipulate the legal system to obtain rights it could not and did not obtain in arms-length negotiations. As a result, PHE is now compelled to fix the record and enforce its right to over $1,500,000 in promised royalties. In addition to the guaranteed royalties, PHE also seeks to recover other financial damages flowing from Le Bonitas' various breaches, and attorneys fees as provided by contract.

THE PARTIES, JURISDICTION AND VENUE

7. Counter-Claimant PHE is a California Corporation with its principal place of business in Los Angeles, California.

8. On information and belief, Counter-Defendant Le Bonitas, S.p.A is a company organized under the laws of Italy, with its principal place of business at Via Bologna, 110/a-59100, Prato, Italy.

9. This Court has subject matter jurisdiction over this Counterclaim based on diversity of citizenship pursuant to 28 U.S.C. §1332(a), because the amount in controversy exceeds the sum of $75,000 and is between a citizen of a foreign state and a citizen of the United States.

10. The Parties have agreed by contract to submit to the personal jurisdiction and venue of the United States District Court for the Southern District of New York.

FIRST CLAIM FOR RELIEF
(Breach of Contract, PHE Against Le Bonitas)

11. PHE incorporates by reference paragraphs 1 through 10 above as if set forth in full herein.

12. In or about March 2009, PHE entered into a valid written License Agreement dated as of February 1, 2009 (the "License Agreement"). A true and correct copy of the License Agreement is attached hereto as Exhibit A and incorporated herein by reference.

13. Pursuant to the License Agreement, PHE agreed to license to Le Bonitas, on a non-exclusive basis and for a five-year term, the right to use Paris Hilton's name and likeness (and other specified intellectual property pertaining to Ms. Hilton) in connection with the marketing and sale of certain items of lingerie, sleepwear and beachwear set forth in Exhibit 1 of the License Agreement.

14. In exchange for the license, Le Bonitas agreed to pay PHE certain minimum guaranteed royalties, totaling €1,225,000 (the rough equivalent of $1,664,000) in accordance with a payment schedule set forth in Exhibit 6 to the License Agreement. Paragraph 3.3 of the License Agreement expressly states that the minimum guaranteed royalties "are obligations of LICENSEE [Le Bonitas] to OWNER [PHE] and are fully earned by owner upon execution of this Agreement." In addition to the guaranteed royalty payments, Le Bonitas also agreed to pay PHE a contingent payment of 8% of net sales.

15. In order to protect Ms. Hilton's brand, and ensure that Le Bonitas would properly advertise, promote and sell the products bearing Ms. Hilton's name, Le Bonitas was expressly required to "use its best efforts to sell, distribute and supply the LICENSED ARTICLES within the LICENSED TERRITORY hereof." *See* LICENSE AGREEMENT ¶14.1. Le Bonitas was further required to "make and maintain reasonable arrangements for the broadest possible distribution of LICENSED ARTICLES through the LICENSED TERRITORY through all regular and permitted DISTRIBUTION CHANNELS" (¶ 14.1), and spend no less than 4% of net sales per annum on advertising and promotions (¶ 14.2). Le Bonitas was also required to commence manufacture, distribution, and sale in each licensed territory on or before January 1, 2010. *See* License Agreement ¶ 14.1.

16. In addition to other rights afforded by law, PHE also had the express right to terminate the License Agreement under certain conditions specified in the License Agreement at ¶ 13.1, including but not limited to the failure or refusal by Le Bonitas to pay the minimum royalty payments, the failure by Le Bonitas to meet its obligations to "distribute, promote and advertise" the licensed articles, the failure by Le Bonitas for a six month period to "make every reasonable effort to commercially distribute and sell all categories of LICENSED ARTICLES," and the failure by Le Bonitas to perform "any other material term or condition."

17. Upon termination, all minimum guaranteed royalties become immediately due. *See* License Agreement ¶ 13.1. On January, 11, 2011, following numerous breach letters from PHE to le Bonitas, PHE sent formal written notice of termination to Le Bonitas in accordance with the contract.

18. Paragraph 9.2 of the License Agreement also provides that PHE is entitled to "reasonable attorney's fees, costs and expenses . . . including costs of collection of all amounts owed to OWNER by LECENSEE and costs of all actions by OWNER against LICENSEE to enforce LICENSEE's compliance with this Agreement."

19. Le Bonitas has breached the express terms of the License Agreement by at least the following conduct:

(a) In or about November 2010, Le Bonitas improperly repudiated its obligations under the License Agreement and abandoned all efforts to manufacture, distribute and sell the licensed articles;

(b) On information and belief, from the outset of the License Agreement, Le Bonitas failed to expend the monies required to meet its promotional commitments set forth in ¶ 14.2 of the License Agreement, and further has failed and refused to account in writing to PHE for the monies expended on promotions; and

(c) Le Bonitas has failed and refused to pay the minimum guaranteed royalty payments, an amount which exceeds $1,500,000, all of which is currently due with interest.

20. PHE has performed all of its obligations under the License Agreement except those, if any, that are excused by Le Bonitas' prior breaches of contract.

21. As a direct and proximate result of Le Bonitas' breaches of contract, PHE has been damaged in an amount to be determined at trial but which is in excess of $1,500,000.

Wherefore, PHE prays for judgment against Le Bonitas as follows:

(a) For a money judgment in an amount to be proven at trial but in excess of $1,500,000;

(b) For pre-judgment and post-judgment interest;

(c) For attorneys-fees and costs as provided by contract; and

(d) For such other relief as the Court may deem just and proper.

Dated: New York, New York
January 27, 2011

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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Defendant demands a trial by jury on all issues so triable.

Dated: New York, New York
January 27, 2011

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